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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED CAPITAL FUNDING
11 CORP.,

12 Plaintiff,

13 v.

14 ERICSSON INC,

15 Defendant.

CASE NO. C15-0194JLR

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT’S MOTION FOR
PARTIAL SUMMARY
JUDGMENT

16 **I. INTRODUCTION**

17 Before the court is Defendant Ericsson Inc.’s (“Ericsson”) motion for partial
18 summary judgment. (*See* MPSJ (Dkt. # 165).) Specifically, Ericsson asks the court on
19 summary judgment to (1) cap Plaintiff United Capital Funding Corp.’s (“United Capital”) potential damages at \$107,298.84; (2) declare that United Capital cannot recover
20 prejudgment interest; and (3) declare that United Capital cannot recover any attorney’s fees. (*See id.* at 2.) United Capital opposes Ericsson’s motion. (*See* Resp. (Dkt. # 179).)
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1 The court has considered the motion, all submissions in support of and opposition to the
2 motion, the relevant portions of the record, and the applicable law. Being fully advised,¹
3 the court GRANTS in part and DENIES in part Ericsson's motion.

4 II. BACKGROUND

5 In 2012, Ericsson and non-party Prithvi Solutions, Inc. ("Prithvi") entered into a
6 Master Services Agreement whereby Prithvi agreed to (1) provide staffing services to
7 Ericsson, and then (2) issue invoices for those services for Ericsson to pay. (6/18/15
8 McCombs Decl. (Dkt. # 55) ¶ 2, Ex. 1; 1/17/19 Pierce Decl. (Dkt. # 166) ¶ 2, Ex. 1 ("UC
9 Pretrial Statement") ¶ 3(f)-(h); 3/4/19 Baker Decl. (Dkt. # 181) ¶ 5, Ex. 3 (attaching
10 Master Services Agreement).) Article 24 of the Master Services Agreement states that
11 the Agreement "shall be construed and enforced in accordance with and governed by the
12 laws of the State of Texas, without regard to its conflict of law provisions." (3/4/19
13 Baker Decl. ¶ 5, Ex. 3 at 26.)

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16 ¹ United Capital requests oral argument. (See Resp. at title page.) Generally, the court
17 should not deny a request for oral argument made by a party opposing a motion for summary
18 judgment unless the motion is denied. *Dredge Corp. v. Penny*, 338 F.2d 456, 462 (9th Cir.1964).
19 However, oral argument is not necessary where the non-moving party suffers no prejudice. See
20 *Houston v. Bryan*, 725 F.2d 516, 517-18 (9th Cir., 1984); *Mahon v. Credit Bureau of Placer Cty.*
21 *Inc.*, 171 F.3d 1197, 1200 (9th Cir. 1999) (holding that no oral argument was warranted where
22 "[b]oth parties provided the district court with complete memoranda of the law and evidence in
support of their respective positions," and "[t]he only prejudice [defendants] contend they
suffered was the district court's adverse ruling on the motion."). "When a party has an adequate
opportunity to provide the trial court with evidence and a memorandum of law, there is no
prejudice [in refusing to grant oral argument]." *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir.
1998) (quoting *Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev. Corp.*, 933 F.2d 724,
729 (9th Cir. 1991)) (alterations in *Partridge*). Here, the issues have been thoroughly briefed by
the parties, and oral argument would not be of assistance to the court. See Local Rules W.D.
Wash. LCR 7(b)(4). Accordingly, the court DENIES United Capital's request for oral argument.

1 United Capital is in the factoring business, which entails contracting to purchase
2 accounts receivable from a client. (Compl. (Dkt. # 1) ¶ 7; UC Pretrial Statement ¶ 3(a).)
3 The client's invoices generally provide the terms of the accounts receivable, and the
4 client generally pays a factoring fee to United Capital. (See Compl. ¶ 7.) On September
5 27, 2010, Prithvi and United Capital entered into a Factoring Agreement, under which
6 United Capital purchased Prithvi's invoices for services Prithvi provided to Ericsson. (*Id.*
7 ¶ 12; UC Pretrial Statement ¶¶ 3(a)-(c), (i); 3/4/19 Baker Decl. ¶ 5, Ex. 1 (attaching the
8 Factoring Agreement).) United Capital states that between March 11, 2013, and May 29,
9 2014, Ericsson paid \$3,418,711.96 to United Capital in accordance with Prithvi's
10 assignment of its accounts receivable to United Capital. (See 3/4/19 Baker Decl. ¶ 11.)

11 In 2013, former Third-Party Defendant Kyko Global, Inc. ("Kyko")² obtained a
12 judgment against Prithvi. (UC Pretrial Statement ¶ 3(q).) On May 5, 2014, Kyko applied
13 to King County Superior Court for a writ of garnishment to be issued to Ericsson. (*Id.*
14 ¶ 3(r).) On May 6, 2014, Kyko served Ericsson with a writ of garnishment. (*Id.* ¶ 3(s).)
15 On May 12, 2014, Ericsson answered the Writ of Garnishment stating that it was
16 indebted to Prithvi in the amount of \$189,640.84. (*Id.* ¶ 3(u).) On June 12, 2014, the
17 King County Superior Court entered judgment and ordered garnishee Ericsson to pay
18 Kyko \$189,640.84, which Ericsson did. (See *id.* ¶¶ 3(x), (y).)

19 On November 24, 2014, United Capital filed the present suit against Ericsson.
20 (See Compl. (Dkt. # 1).) Specifically, United Capital alleges that Ericsson owes United

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22 ² On March 4, 2019, Ericsson voluntarily dismissed Kyko. (Not. of Voluntary Dismissal
(Dkt. # 178).)

1 Capital \$184,539.50, which sum represents the total of 22 unpaid Prithvi invoices dated
2 March 24, 2014, to May 2, 2014. (*Id.* ¶¶ 12-16.) United Capital’s complaint seeks
3 “judgment in the amount of \$184,539.50, together with prejudgment interest, costs and as
4 may be allowed, reasonable attorney’s fees.” (*Id.* at 6; *see also id.* ¶ 16 (“Ericsson owes
5 United [Capital] the sum of \$189,539.50 plus prejudgment interest at the rate prescribed
6 by law.”); *id.* ¶ 18 (“To the extent the substantive laws of the [s]tate of Texas may apply
7 to this claim, United [Capital] is entitled to be reimbursed for all of its attorney’s fees
8 incurred pursuant to Tx. Civ. Proc. & Rem. Statute 38.001.”).) In its response to
9 Ericsson’s present motion, however, United Capital argues that it is entitled to recover
10 \$189,640.84, which is the sum that Ericsson paid to Kyko in the garnishment proceeding
11 and approximately \$5,000.00 more than United Capital claimed in its complaint. (*Resp.*
12 at 6.)

13 Ericsson denies that it owes \$184,539.50 to United Capital. (*See Am. Answer*
14 (*Dkt. # 20*) ¶ 15.) Ericsson pleaded affirmative defenses, including that it had paid the
15 \$189,640.84 it owed to Prithvi via the garnishment proceeding. (*Id.* ¶ 23 & Counterclaim
16 ¶ 6.) Ericsson also counterclaimed alleging that it had already paid United Capital more
17 than \$3,000,000.00, including overpayments while the writ of garnishment was pending.
18 (*Id.* Counterclaim ¶¶ 8-9.)

19 On June 18, 2015, Ericsson moved for summary judgment on United Capital’s
20 claim. (1st Ericsson MSJ (*Dkt. # 52*).) In support of that motion, Ericsson filed two
21 declarations from employees calculating the amount that Ericsson paid to United Capital.
22 (*See 6/18/15 McCombs Decl. (Dkt. # 55); 6/18/15 Sanchez Decl. (Dkt. # 54).*) Ericsson

1 provided testimony that it paid \$189,640.84 in response to the writ of garnishment, and
2 then continued paying on the same invoices after the garnishment because its accounting
3 department inadvertently failed to create a “payment block” in its computer system for
4 some of the invoices that Ericsson paid through the garnishment. (6/18/15 McCombs
5 Decl. ¶ 6.) Ericsson further provided testimony and evidence indicating that it paid
6 \$82,342.00 to United Capital’s bank account following the May 5, 2014, garnishment.
7 (*See id.*) Accordingly, Ericsson argues in its present motion that United Capital’s
8 maximum possible recovery against Ericsson is \$107,298.84 (\$189,640.84, presently
9 claimed by United Capital (*see* Resp. at 6), minus \$82,342.00). (*See* MPSJ at 2.)

10 On July 16, 2015, United Capital filed its own motion for summary judgment
11 seeking resolution of its claim and Ericsson’s counterclaim. (UC MSJ (Dkt. # 74).) In a
12 supporting declaration, United Capital’s Chief Financial Officer testified that Ericsson
13 owed United Capital \$182,474.50 for the 22 invoices listed in the complaint. (7/16/15
14 Baker Decl. (Dkt. # 76) ¶ 25.) This is a different amount than the \$184,539.50 listed in
15 United Capital’s complaint. (*Compare id. with* Compl. ¶¶ 12-16.) In its response to
16 Ericsson’s present motion for partial summary judgment, United Capital asserts that it is
17 entitled to recover the entire \$189,640.84 that Ericsson paid to Kyko. (Resp. at 6.)
18 However, United Capital also provides testimony that it made an inadvertent “scriveners
19 error” in calculating the amount Ericsson allegedly owes and subsequently determined
20 the Ericsson owes United Capital a total of \$190,566.30 for the 22 invoices listed in its
21 complaint. (*Id.* (citing 3/4/19 Baker Decl. ¶ 32).) Thus, over the course of the litigation,
22 United Capital has asserted at least four different amounts that Ericsson allegedly owes.

1 On December 15, 2015, the court granted summary judgment in favor of Ericsson
2 on United Capital's claim as well as on Ericsson's counterclaim. (12/15/15 SJ Order
3 (Dkt. # 98).) In so ruling, the court determined as a preliminary matter that Washington
4 law applies to this litigation:

5 [United Capital] argues that Texas law should apply to this dispute because
6 it was the choice of law in the contract between Ericsson and Prithvi. . . .
7 However, this litigation is only tangentially related to the contract between
8 Ericsson and Prithvi which was to be governed by Texas law and the
9 UCC. . . . Rather, this litigation pertains to [United Capital's] attempt to
10 attack a garnishment judgment from King County Superior Court based on
11 an assignment of rights that occurred in Washington from a Washington
12 resident. . . . Accordingly, the Court applies Washington law and the UCC.

13 (*Id.* at 4 (docket citations omitted).)

14 United Capital appealed. (*See* Not. of App. (Dkt. # 123).) The Ninth Circuit
15 reversed the district court's grant of summary judgment to Ericsson but affirmed the
16 district court's decision that Washington law applies:

17 In determining what law applies, the court looks to the choice of law rules of
18 the state in which the district court sits—in this case Washington. *Klaxon*
19 *Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Unless the parties
20 have clearly expressed a choice of law, courts in Washington look to “the
21 state with the most significant relationship to the issue in question.” *W. Am.*
22 *Ins. Co. v. MacDonald*, 841 P.2d 1313, 1315 (Wash. Ct. App. 1992).
Because there is no agreement between Ericsson and United [Capital] that
expresses a choice of law, we determine which state has the most significant
relationship to the action.

At its core, this case concerns a dispute over the right to payment associated
with Kyko's garnishment judgment entered in Washington state court, which
arose from a judgment entered in the Western District of Washington.
Indeed, despite United [Capital]'s contention that the garnishment action is
irrelevant to its claims, United [Capital] asserts that “[i]nstead of paying
United [Capital] on [the] 22 accounts, Ericsson paid Kyko . . . in response to
a garnishment writ” and that “[t]he money that Ericsson paid to Kyko
included payment of the same 22 accounts that Ericsson owed to United.”

1 Blue Br. at 8, 10. Thus, Washington has the most significant relationship to
2 the case, and we will apply Washington law.

3 (9th Cir. Mem. Dec. (Dkt. # 133) at 4-5.)

4 Following remand from the Ninth Circuit, this matter was reassigned to the
5 undersigned judge. (Min. Order (Dkt. # 135).) Ericsson moves once again for partial
6 summary judgment. (*See* MPSJ.) The court now considers Ericsson's motion.

7 **III. ANALYSIS**

8 Ericsson seeks partial summary judgment on three issues. (*See generally* MPSJ.)
9 First, Ericsson asks the court to cap United Capital's potential damages at \$107,298.84.
10 (*Id.* at 2.) Second, Ericsson asks the court to rule on summary judgment that United
11 Capital cannot recover prejudgment interest. (*Id.*) Finally, Ericsson asks the court to rule
12 on summary judgment that United Capital cannot recover any attorney's fees. (*Id.*) After
13 briefly discussing the standard for a summary judgment motion, the court addresses the
14 foregoing issues in reverse order.

15 **A. Summary Judgment Standard**

16 Summary judgment is appropriate if the evidence, when viewed in the light most
17 favorable to the non-moving party, demonstrates "that there is no genuine dispute as to
18 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ.
19 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,
20 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing
21 there is no genuine issue of material fact and that he or she is entitled to prevail as a
22 matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden,

1 then the non-moving party “must make a showing sufficient to establish a genuine
2 dispute of material fact regarding the existence of the essential elements of his case that
3 he must prove at trial” in order to withstand summary judgment. *Galen*, 477 F.3d at 658.
4 The court is “required to view the facts and draw reasonable inferences in the light most
5 favorable to the [non-moving] party.” *Scott v. Harris*, 550 U.S. 372, 378 (2007).

6 **B. Attorney’s Fees**

7 Ericsson moves for summary judgment on United Capital’s claim for attorney’s
8 fees. (MPSJ at 10.) Ericsson argues that both this court and the Ninth Circuit have ruled
9 that Washington law applies to this dispute. (*Id.*; *see also* 12/15/15 SJ Order at 4; 9th Cir.
10 Mem. Dec. at 4-5.) Washington limits attorney fees to \$200.00 for prevailing parties in
11 the absence of a contract, statute, or recognized equitable exception. *See* RCW 4.84.080;
12 *City of Seattle v. McCready*, 931 P.2d 156, 160 (Wash. 1997). Ericsson notes that there
13 is no contract between United Capital and Ericsson. (MPSJ at 2, 10.) Further, United
14 Capital is suing Ericsson under Section 9-406 of the Uniform Commercial Code
15 (“UCC”). (*See* Compl. ¶ 14.) Yet, in Washington, “[t]he UCC does not provide for an
16 award [of attorney’s fees] for a prevailing party.” *King Aircraft Sales, Inc. v. Lane*, 846
17 P.2d 550, 558 (Wash. Ct. App. 1993) (citing, among other authorities, *Micheal-Regan*
18 *Co. v. Lindell*, 527 F.2d 653, 656 (9th Cir. 1975) (stating that Washington law does not
19 authorize recovery of attorney’s fees under the UCC)). In the absence of any contractual,
20 statutory, or other equitable ground, Ericsson argues that the court must grant summary
21 judgment in its favor on this issue. (MPSJ at 10.)

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1 United Capital agrees that Washington law applies, but nevertheless asserts that
2 “pursuant to Washington’s choice-of-law rules [the court] should enforce the
3 choice-of-law provision contained in . . . the Master Services Agreement between
4 Ericsson and Prithvi,” which applies Texas law to construe and enforce that agreement.
5 (Resp. at 7 (citing Baker Decl. ¶ 5, Ex. 1 § 24).) United Capital argues that “since Prithvi
6 had the right to enforce the [Master] Services Agreement and recover attorney’s fees
7 from Ericsson under Tx. Civ. Proc. & Rem. Statute § 38.001, so too does United
8 [Capital]” pursuant to the Factoring Agreement between United Capital and Prithvi. (*See*
9 Resp. at 10.)

10 The court disagrees. The Factoring Agreement between United Capital and
11 Prithvi never mentions the Master Services Agreement. (*See generally id.*) Instead, it
12 states that “[Prithvi] shall offer to sell to [United Capital] as absolute owner such of
13 [Prithvi’s] Accounts as are listed from time to time on Schedule of Accounts.” (*Id.*
14 ¶ 2.1.) An “Account” is defined as “a right to payment of a monetary obligation, whether
15 or not earned by performance, . . . for services rendered or to be rendered.” U.C.C.
16 § 9-102 (Am. Law Inst. & Unif. Comm’n 1977).³ The dispute here does not involve any
17 claim or allegation of a breach of the Master Services Agreement. No party alleges that
18 Prithvi did not perform under the Master Services Agreement or that United Capital is not
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21 ³ The Factoring Agreement states that “[a]ll capitalized terms not herein defined shall
22 have the meaning set forth in the [UCC].” (Baker Decl. ¶ 5, Ex. 1 at 3.) The term “Account” is
capitalized in the Factoring Agreement but not defined therein. (*See generally id.*) Thus, the
court gives this term the meaning set forth in the pertinent portion of the UCC.

1 entitled to payment on the invoices based on any breach by Prithvi.⁴ Rather, the crux of
2 this suit involves a dispute over whether—following the execution of the Factoring
3 Agreement between United Capital and Prithvi—Ericsson paid, did not pay, partially
4 paid, or misdirected its payment (due to the garnishment proceeding in Washington) on
5 the invoices at issue.⁵

6 Indeed, as this court previously explained when ruling that Washington law
7 applies to this dispute, “this litigation is only tangentially related to the [Master Services
8 Agreement] between Ericsson and Prithvi.”⁶ (12/15/15 SJ Order at 4.) Accordingly, the
9 court finds no reason to revisit its earlier choice-of-law ruling or to depart from the Ninth
10 Circuit’s prior ruling on appeal that this suit is governed by Washington law. As noted
11

12 ⁴ (See Compl. ¶ 13 (“Ericsson received each of the Outstanding and Unpaid Invoices and
13 has never communicated or ever objected to any of the goods or services provided by Prithvi to
14 Ericsson supporting the sums due under the Outstanding and Unpaid Invoices.”); Am. Answer
¶ 13 (“Ericsson admits that it did not object to the services provided by Prithvi to Ericsson
supporting the sums due in the invoices.”).)

15 ⁵ (See Compl. ¶ 15 (“United [Capital] has never received any payment of any of the
16 amounts due and owing in connection with the Outstanding and Unpaid Invoices . . .”), ¶ 17
17 (“United [Capital] has suffered damages by virtue of Ericsson having failed to fulfill its
18 obligation to may payment to United [Capital] under the terms of the invoices and as statutorily
19 required by 9-406 of the UCC.”); Am. Answer ¶ 15 (“Ericsson admits that it has not paid
plaintiff all of the sums listed in the invoices from Prithvi as listed in paragraph 12 of the
Complaint, but denies it has made no payment.”), ¶ 23 (“ . . . Ericsson has paid the disputed
amounts sought by [P]laintiff.”), ¶ 8 (Counterclaim) (“In its Complaint, [United Capital] claims
that Prithvi had already assigned to it the Ericsson accounts receivable, and that Ericsson should
have paid [United Capital] instead of satisfying the Garnishment Judgment.”).)

20 ⁶ Ericsson also asserts liability defenses based on its assertion that United Capital’s notice
21 letter to Ericsson was not sufficiently detailed to constitute notice of the assignment. (See Reply
22 (Dkt. # 183) at 2 n.3; Am. Answer ¶ 22 (“The Complaint fails because the alleged account
assignments were fraudulent, improper or invalid.”).) These defenses also do not implicate
Prithvi’s performance under the Master Services Agreement (*see* Am. Answer ¶ 13), and they are
not at issue in this motion.

1 above, under Washington law, United Capital is not entitled to an award of attorney's
2 fees beyond those allowed RCW 4.84.080. The court, therefore, GRANTS Ericsson's
3 summary judgment motion on the issue of attorney's fees.⁷

4 **C. Prejudgment Interest**

5 A court may award prejudgment interest if it is determined that the defendant's
6 liability was for a sum certain. *See Hansen v. Rothaus*, 730 P.2d 662, 665 (Wash. 1986)
7 ("A defendant should not . . . be required to pay prejudgment interest in cases where he is
8 unable to ascertain the amount he owes to the plaintiff."). Ericsson argues that because
9 United Capital has—over the course of this litigation—asserted four different totals to
10 which it is entitled to recover from Ericsson based on the 22 invoices at issue, United
11 Capital has not asserted a "sum certain" and, therefore, is not entitled to recover
12 prejudgment interest should it ultimately prevail at trial. (*See* MPSJ at 10.)

13 The court disagrees. Under Washington law, a party is entitled to prejudgment
14 interest where the amount due is liquidated. *Weyerhaeuser Co. v. Commercial Union Ins.*
15 *Co.*, 15 P.3d 115, 132 (Wash. 2000), *as amended* (Jan. 16, 2001) (citing *Prier v.*
16 *Refrigeration Eng'g Co.*, 442 P.2d 621, 626 (Wash. 1968)). A liquidated claim is "one
17 where the evidence furnishes data which, if believed, make it possible to compute the

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20 ⁷ In its surreply, United Capital asserts that the court should strike certain portions of
21 Ericsson's reply concerning the anti-assignment provision in the Master Services Agreement.
22 (Surreply (Dkt. # 185) at 2.) Because the court did not rely on this portion of Ericsson's reply or
the anti-assignment provision in rendering its decision, the court DENIES United Capital's
request as moot.

1 amount due with exactness, without reliance on opinion or discretion.”⁸ *Id.* “[T]he
2 existence of a dispute over part or all of a claim does not change the claim from a
3 liquidated to an unliquidated one.” *Prier*, 442 P.2d at 627.

4 The fact that over the course of this litigation and discovery, United Capital has
5 asserted varying totals for the invoices at issue does not change the character of United
6 Capital’s claim from liquidated to unliquidated. The questions that will be before the
7 jury do “not involve opinion or an exercise of discretion regarding the amount of the
8 award, as would be the case with general damages.” *See Weyerhaeuser*, 15 P.3d at 133.
9 Where, like here, “the amount sued for may be arrived at by a process of measurement or
10 computation from the data given by the proof, without any reliance upon opinion or
11 discretion after the concrete facts have been determined, the amount is liquidated and will
12 bear interest.” *Prier*, 442 P.2d at 626. “Mere difference of opinion as to the amount
13 is . . . no more a reason to excuse [a defendant] from [prejudgment] interest than
14 difference of opinion whether [the defendant] legally ought to pay at all, which has never
15 been held an excuse.” *Id.* at 627 (quoting 5A Corbin, Contracts § 1046 n.69 (1964)).
16 Although the record presently contains disputed facts regarding how United Capital
17 applied Ericsson’s payments to various Prithvi invoices and whether Ericsson misdirected
18 certain payments due to the garnishment proceedings or otherwise failed to pay the
19 invoices at issue, those facts—along with the specific a specific amount due, if any—will
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21 ⁸ In contrast, an unliquidated claim is one “where the exact amount of the sum to be
22 allowed cannot be definitely fixed from the facts proved, disputed or undisputed, but must in the
last analysis depend upon the opinion or discretion of the judge or jury as to whether a larger or a
smaller amount should be allowed.” *Prier*, 442 P.2d at 626.

1 be determined by a jury. If the jury finds in United Capital's favor, then United Capital
2 will be entitled to recover prejudgment interest on the amount of unpaid invoices.
3 Accordingly, the court DENIES Ericsson's motion for summary judgment on
4 prejudgment interest.

5 **D. Limiting United Capital's Damages**

6 Ericsson also moves to cap the amount of damages that United Capital may assert
7 at trial. Ericsson argues that it paid \$82,342.00 to United Capital's bank account after
8 Ericsson answered the writ of garnishment, and that United Capital's damages must be
9 offset by this amount. (MPSJ at 8 (6/18/15 McCombs Decl. (Dkt. # 55) ¶ 6, Ex. 3
10 (attaching documentation of payments); *id.* ¶ 2, Ex. 2B at 52-55 (identifying recipient
11 bank account as belonging to United).) Ericsson asserts that applying these payments to
12 the highest of the different totals that United Capital has alleged in this suit for the
13 invoices at issue decreases United Capital's total possible damages award to \$107,298.84.
14 (*See* MPSJ at 8-9.)

15 United Capital counters that it has already given Ericsson credit for the \$82,342.00
16 that it received from Ericsson. (Resp. at 12.) United Capital asserts that it produced
17 reports to Ericsson in this case, including a document entitled, "Collection Report
18 (Format A) – Collection posted between 7/31/2013 and 5/30/2014," showing that United
19 Capital received \$82,342.00 from Ericsson and applied those monies to payment of
20 Prithvi accounts. (Resp. at 12-13 (citing Baker Decl. ¶¶ 25-28, Ex. 18).)⁹ United Capital

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22 ⁹ Ericsson asserts that Mr. Baker's declaration is based solely on hearsay because he
asked "counsel" to perform the reconciliation. (*See* Reply (Dkt. # 183) at 4 (citing Baker Decl.

1 also concluded after reviewing a reconciliation of Ericsson’s payments with its own
2 records that Ericsson “failed to pay United [Capital] unpaid and outstanding Prithvi
3 invoices totaling . . . \$190,566.30, and remains liable to United [Capital] for the unpaid
4 invoices.” (Baker Decl. ¶¶ 30-32.) Accordingly, the court determines that there is a
5 genuine dispute of material fact that prohibits the court from entering summary judgment
6 on this issue in Ericsson’s favor. The court, therefore, DENIES Ericsson’s motion on this
7 issue.¹⁰

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15 ¶¶ 31-32 n.6.) The court rejects this argument because Mr. Baker attests that “United [Capital]
16 reviewed the reconciliation and determined that . . . Ericsson failed to pay United [Capital]
unpaid and outstanding Prithvi invoices” (Baker Decl. ¶ 32.)

17 ¹⁰ In its surreply, United Capital asks the court to strike certain portions of Ericsson’s
reply concerning the payments Ericsson made to United Capital as going beyond the scope of a
18 proper reply by seeking relief not requested in Ericsson’s motion. (Surreply at 1.) Because the
court denies Ericsson’s motion for summary judgment concerning a limitation on United
19 Capital’s damages, and does not grant any relief outside the scope of Ericsson’s motion, the
court DENIES United Capital’s request as moot.

20 In addition, United Capital asks the court to strike certain “objections” Ericsson raises in
its reply to evidence offered by United Capital concerning Ericsson’s payments on Prithvi
21 invoices. (*Id.* at 2-3.) The “objections” United Capital asks the court to strike are more aptly
viewed as arguments that go the weight of United Capital’s evidence rather than true evidentiary
22 objections. Further, because the court denies Ericsson’s motion to limit United Capital’s
damages, the court also DENIES United Capital’s request to strike Ericsson’s “objections” as
moot.

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Dated this 28th day of May, 2019.

JAMES L. ROBERT
United States District Judge